

Planners sink new wetlands changes

By JEFF MORRIS

In a strongly-worded preliminary report approved by the Lewisboro Planning Board on Tuesday, planners said they do not support proposed changes to Lewisboro's Wetlands Code.

The report was issued in response to the town board having referred the proposed law to the planning board for its recommendations. Its report opposing changes to the law now will be reviewed by the town board.

Titled "Preliminary Report and Recommendation to the Lewisboro Town Board on Proposed Local Law Amending Chapter 217, Wetlands and Watercourses, of the Lewisboro Town Code," the eight-page response, signed by Planning Board chairman, Jerome Kerner, stated that the proposed law contains numerous amendments that "in many instances, provide for significant changes to the substantive and procedural provisions of the Wetlands Code." It said the board reviewed both the proposed amendments and written comments submitted by various organizations and individuals.

The planning board's response stated that while the proposed law contains amendments to the Wet-

lands Code that impact "both the scope of its protection and the manner in which its terms are administered and enforced," there was no explanation of the rationale for these regulatory changes. "Nor are the amendments accompanied by a statement of justification for their implementation," the report went on, "or an accounting as to how they will fulfill the findings of fact and intention clearly expressed at the outset of the Wetlands Code."

As noted, the Wetlands Code, enacted by the town board in February 2004 as an amendment to the town's original wetland regulations in effect since 1995, began with a pronouncement of the intent underlying its provisions. Among these were an acknowledgement of the ecological benefits provided by wetlands and watercourses; that the "integrity and realization of the full potential of wetland and watercourse function and benefits is inextricably linked to the presence of intact, undisturbed natural communities or surrounding buffer areas"; and that "activities in and around wetlands, watercourses and associated buffer areas be conducted ... in a manner that promotes the preservation" of these areas.

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These matters of intent, the report noted, remain unchanged in the proposed law.

The planning board requested that the town board "articulate the reasons for the amendments, so that they can be analyzed in an informed context." In the absence of such explanations, and noting that its study of the matter is still underway, the Planning Board nonetheless provided detailed comments on both the substantive and procedural provisions of the code.

It noted that in the proposal, "wetlands of less than 2,500 square feet will be deprived of buffer protection," and stated, "there is no justification for this revised dimensional standard, or an explanation as to how a wetland of this size is less deserving of protection." The board contended that a wetland of this size may be functionally connected to a lake, stream or larger hydrological complex, and that under those circumstances, an interconnected wetland or watercourse system may be compromised due to the loss of buffer protection around a 2,500 square foot wetland segment.

It raised similar objections to numerous other provisions of the pro-

posed law, including permitting aboveground or underground chemical or petroleum storage tanks in a buffer area; allowing animal feed lots, pens and manure storage close to wetlands through an administrative permit; failure to specify whether use of insecticides, pesticides or nutrient-rich fertilizers are considered part of "normal ground maintenance" that is to be permitted within a buffer area; and failure to address the implications of allowing maintenance of swimming pools within a buffer area.

Some key objections pertained to the proposed shift of responsibility for enforcement of the Wetlands Code from the town wetland consultant to the building inspector, and transfer of adjudication of violations — which currently can be either before the planning board or the Town Justice Court — exclusively to the court.

The board noted that enforcement had originally been assigned to the building inspector, but that respon-

sibility was transferred to the wetland consultant, and argued that the change was made because the building inspector position does not ordinarily entail areas other than zoning, building and fire code regulations. Further, it said, a trained wetland specialist is more suited to this activity. Thus, it concluded, "the Planning Board concludes that enforcement should remain in the hands of the Town Wetland Consultant."

As to the venue for adjudication, the response noted that wetland violations are typically first dealt with through permitted efforts to remediate and mitigate the problem. The

planning board should continue to have jurisdiction for monitoring the process, it argued. By automatically getting the court involved, as proposed, the process will potentially become more unwieldy, the report maintained. It noted, "While there may be criticisms regarding the manner in which violations are heard and processed under the Wetlands Code,

a 'devil you know' scenario may be present and exclusive jurisdiction by the Town Justice Court may upset and hinder response to wetland violations." The board suggested consulting the town justices and town prosecutor on the proposed change involving adjudication.

After stating more comments and criticisms regarding proposed procedural changes, the preliminary recommendation concluded, "The Planning Board does not support the proposed Local Law, as drafted." It urged the town board to fully consider its comments and those contained in the written submissions appended to the report, and said that it may supplement its preliminary recommendations as its examination of the proposal continues.

In a final recommendation that appears to take aim at the unilateral manner in which the town board developed the proposal, the planning board suggested that "a coordinated approach to Wetlands Code revisions — one that proceeds with input from the Town Board, the Planning Board, the Town Justices, the Building Inspector, the Town's Wetlands Consultant and interested parties — be undertaken should amendments to existing regulations be pursued."

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— PLANNING BOARD,
TOWN OF LEWISBORO
